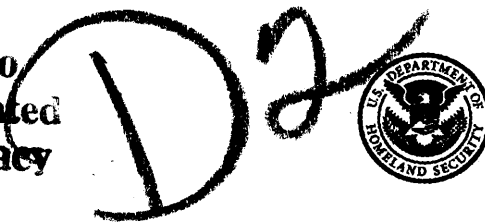


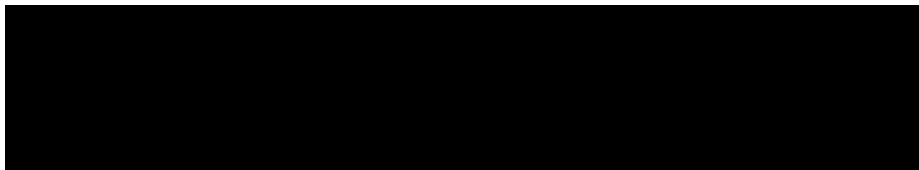
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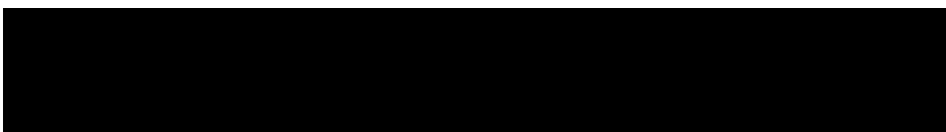
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
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Services



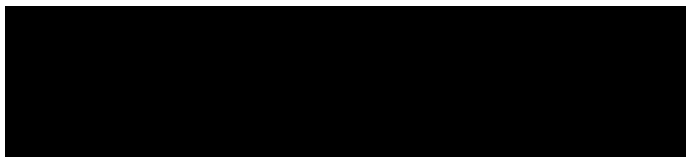
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IN RE: Petitioner:
Beneficiary:



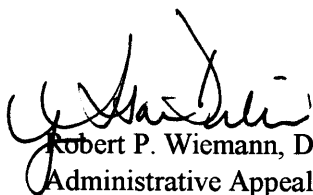
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a skilled nursing facility that seeks to employ the beneficiary as a utilization review coordinator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a utilization review coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 18, 2002 letter in support of the

petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: coordinating special Medicaid programs by independently planning, developing, initiating, and evaluating service provided through multiple agencies or by analyzing Medicaid and state and local hospitalization acute care hospital claims which are not medically justifiable to determine medical necessity and to approve or deny the payment of the claim; researching availability and utilization of program standards and provider qualification requirements by reviewing the scope of practice, professional literature and information from states providing similar programs; identifying problems affecting program growth; recommending changes in program requirements to management; developing and implementing statewide quality assurance surveys for data collection from recipients of services to evaluate quality of services; reviewing program records and identifying appropriateness of specialty services provided to Medicaid recipients; monitoring and evaluating hospital utilization review plans to determine compliance with regulations; reviewing and evaluating patient charges to determine if severity of illness and intensity of service criteria were met in relation to acute care provided; evaluating admissions documentation to ensure that required documentation is included in patient records; making recommendations for corrective action to be taken by the hospital on the basis of on-site review; determining the frequency of non-compliance with state and federal utilization review guidelines; providing training on quality assurance practices; and researching and responding to policy and procedure inquiries from other state and federal agencies and providing program service information for federal and state reporting requirements.

The director found that the proffered position was not a specialty occupation because the job is a nursing function. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into a nursing position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner submitted adequate evidence to establish that the proffered position is sufficiently complex to establish it as a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the director that that proffered position is a nursing position. The position of utilization review coordinator is a separate position with distinct (although sometimes

overlapping) skills from that of a nurse. There is no entry in the *Handbook* for the proffered position, and so the AAO must rely on other factors in making its determination.

The director referenced the Department of Labor's *Dictionary of Occupational Titles (DOT)* in providing a definition for the proffered position. The director also stated that the *DOT* gives the position an SVP rating of 7, "which is over two years and up to and including 4 years of education." On appeal, counsel states that CIS has said that the SVP ratings are given little weight, but assuming that CIS was using the rating, a rating of 7 "is sufficient for H-1B classification." Counsel is correct that the AAO does not find the *DOT* to be persuasive, but incorrect is stating that an SVP rating of 7 establishes a position as a specialty occupation. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Counsel submitted an entry from a publication entitled, "Enhanced Guide for Occupational Exploration," which indicates that a utilization review coordinator is required to have a bachelor's degree. Even if the petitioner had provided more information about the publication to establish it as an authoritative source, the entry only states that a degree is required, but does not indicate that it needs to be *in a specific specialty*, as is required by the regulations.

Regarding parallel positions in the petitioner's industry, the petitioner submitted a job description for a senior utilization review analyst from the Department of Human Resource Management of the State of Virginia. The AAO notes that the petitioner's position description is identical to that of Virginia's Department of Human Resource Management. The director requested that the petitioner provide more detail about what the beneficiary would actually be doing in the job, and counsel simply resubmitted the previous list of duties identical to those of the State of Virginia. It is unlikely that the beneficiary would be performing identical duties to those of someone working for a state agency. By describing the position in almost exactly the same terms as in the State of Virginia's position description, the petitioner has not shown how its organization would specifically use a utilization review coordinator or what the beneficiary would do in that position. As a result, many of the duties are nonsensical in the context of a health care provider like the petitioner, since they are oriented toward a state agency. Nonetheless, counsel asserts that this is a parallel position to the petitioner's and therefore establishes the position as a specialty occupation. The AAO disagrees, but even if the positions were parallel, the State of Virginia only requires a college degree with "course work in nursing or medicine." It does not require that the degree be in nursing or medicine, only that the individual possesses a degree with some course work in the field. This does not establish that a degree in a specific specialty is required for entry into the position.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record does not contain any evidence of the petitioner's past hiring practices, despite the director having requested this information in his request for additional evidence. The

petitioner chose not to respond to this request and, therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.